

STATE OF MICHIGAN
COURT OF APPEALS

ROXANNA ROBINSON,

Plaintiff-Appellant,

v

DETROIT MEDICAL CENTER,

Defendant-Appellee.

UNPUBLISHED

March 1, 2005

No. 251861

Wayne Circuit Court

LC No. 03-301565-CL

Before: Fort Hood, P.J., and Griffin and Donofrio, JJ.

PER CURIAM.

Plaintiff appeals as of right an order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff alleges that the trial court erred in granting summary disposition pursuant to MCR 2.116(C)(10) because an issue of material fact existed and defendant was not entitled to judgment as a matter of law. We disagree. On appeal, a trial court's decision regarding a motion for summary disposition is reviewed de novo. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). In ruling on a summary disposition motion, a trial court must determine whether an issue of material fact existed or whether the moving party was entitled to a judgment as a matter of law. *Meyer v City of Center Line*, 242 Mich App 560, 574; 619 NW2d 182 (2000). The factual sufficiency of the complaint is tested when a motion for summary disposition pursuant to MCR 2.116(C)(10) is raised. *Corley v Detroit Board of Education*, 470 Mich 274, 278; 681 NW2d 342 (2004). "In evaluating such a motion, a court considers the entire record in the light most favorable to the party opposing the motion, including affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties." *Id.* When the evidence offered by the opposing party fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. *Id.*

Where the burden of proof at trial on a dispositive issue rests on a nonmoving party, the nonmoving party may not rely on mere allegations or denials in pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists. *McCart v J Walter Thompson, Inc*, 437 Mich 109, 115; 469 NW2d 284 (1991). If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted. *McCormic v Auto Club Ins Ass'n*, 202 Mich App 233, 237; 507 NW2d 741 (1993). Although circumstantial evidence may be utilized to establish a

case, to oppose a motion for summary disposition, the nonmoving party must establish more than conjecture and speculation to meet the burden of proof of evidentiary support to create a genuine issue of material fact. *Libralter Plastics, Inc v Chubb Group*, 199 Mich App 482, 486; 502 NW2d 742 (1993). Conjecture is defined as “an explanation consistent with known facts or conditions, but not deducible from them as a reasonable inference.” *Id.*

Common-law invasion of privacy protects against four types of invasion: (1) intrusion upon the plaintiff's seclusion or solitude, or into his private affairs, (2) public disclosure of embarrassing private facts, (3) publicity that places the plaintiff in a false light, and (4) appropriation of the plaintiff's name or likeness. *Doe v Mills*, 212 Mich App 73, 79-80; 536 NW2d 824 (1995). “In order to establish an action for intrusion, a plaintiff must show: (1) an intrusion by the defendant, (2) into a matter that the plaintiff has a right to keep private, (3) by the use of a method that is objectionable to the reasonable person.” *Duran v Detroit News, Inc*, 200 Mich App 622, 630; 504 NW2d 715 (1993). Although the cause of action for intrusion upon a person's seclusion or solitude can be analogous to trespass, it is unnecessary to show physical invasion onto a person's property. *Id.*

In this case, plaintiff failed to demonstrate that defendant has committed an intrusion upon her seclusion or solitude. Plaintiff alleged that defendant, acting in conjunction with the federal government, invaded her privacy by wiretapping her fax machine at her private residence. In support of this assertion, plaintiff presented the following: her sister's military discharge records; transactions reports that listed a phone number belonging to defendant; an affidavit from an investigator tracing the number to defendant; a hearsay statement from a physician that questions were asked about plaintiff; plaintiff's raise; and plaintiff's promotion. This information does not create a genuine issue of material fact, but rather, rises to the level of conjecture. *Libralter, supra*. Plaintiff failed to present expert testimony to indicate how the mere appearance of a phone number correlated to defendant on her fax machine rose to the level of wire-tapping.

Affirmed.

/s/ Karen M. Fort Hood
/s/ Richard Allen Griffin
/s/ Pat M. Donofrio